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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation and maintenance of corporations, is to deal with members of the bar, exclusively.

The Kentucky Gross Receipts (Consumers') Sales Tax law has been repealed by Laws of 1936, House Bill No. 2, effective January 15, 1936.

The Ohio Legislature has extended the Retail Sales Tax of that state to be effective to March 31, 1937. In addition, it has provided for a "Use" Tax on sales of tangible personal property in connection with which the Retail Sales Tax has not been paid.

Retail Sales Taxes in other states which are imposed for limited periods are at this time scheduled to expire on the folowing dates:

1936

March 31—Maryland (Gross Receipts) Sales Tax. (A special legislative session will probably be called to extend the tax beyond this date.)

1937

March 15—Idaho Retail Sales Tax.
March 31—Wyoming Sales Tax.
April 1—Iowa Retail Sales Tax.
May 1—North Dakota Retail Sales Tax.
June 30—Colorado Retail Sales Tax, North Carolina Gross Sales Tax and West Virginia Retail Sales Tax.
July 1—Arkansas Retail Sales Tax and Oklahoma Consumers' Sales Tax.
December 31—Missouri Retail Sales Tax.

Raymond Lesnau

President.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for February

Trends in Franchise Taxation

Foreign Corporations

EDWARD ROESKEN

Since the decision of the United States Supreme Court in 1924 in the Air-Way Electric Company case, (*Air-Way Electric Appliance Co. v. Day*, 266 U. S. 71, 45 Sup. Ct. 12), which held that an annual franchise tax might not be applied against foreign corporations based upon authorized but unissued no par value stock, the use of an allocation of *authorized* capital stock as the basis of a franchise tax on foreign corporations has been practically abandoned.

The trend of legislative enactments since the decision mentioned was rendered may be indicated by the following brief statements:

Four states have in recent years enacted laws providing for franchise taxes based upon *net income* allocated to the state.

Six states have imposed franchise taxes, applicable to foreign corporations, based either upon the proportion of *the actual value behind the corporation's outstanding capital stock* allocated to the state, or upon *the value of the property actually owned or employed* in the state.

Four states have either imposed new franchise taxes or amended provisions in effect prior to 1924 so as to make the present franchise tax basis, as applied to foreign corporations, the proportion of either the *issued*, the *outstanding* or the *subscribed capital stock*, while three have used an allocation of *issued and outstanding capital stock, surplus and undivided profits* as the primary basis of the tax.

There remain, however, a few states in which, in practice, a foreign corporation's *authorized shares* still form the basis of such a tax. In one state the law prescribes that *authorized capital stock* shall be used, while in two others the words "capital stock" appear without further description in the statutes, and corporations are, in practice, required to pay upon the basis of their *authorized capital stock*. In these two states an allocation is permitted, while in the state first referred to the authorized capital stock bears the full burden of the franchise tax without apportionment.

In the balance of the states which impose franchise taxes on foreign corporations, a variety of bases continue to be employed. Typical of these there are found in the laws such expressions as:

issued capital stock,
outstanding issued capital stock and surplus,
stated capital and paid-in surplus,
paid-up capital and surplus,
asset value of capital stock,
capital employed in the state,
corporate excess, and
net income.

Domestic Corporations

Delaware.

Common stock without par value issued under amendment in exchange for Class A stock, stands on the same footing as other common stock previously issued, although underlying value of the Class A stock may have been greater. A holder of stock without par value, previously designated as Class A stock, contended that an amendment changing such stock into common stock without par value was invalid on the ground that the amendment resulted in reduction of capital contrary to the provisions of Section 26 of the General Corporation Law. The alleged reduction was figured out as follows: Before the amendment the amount of capital represented by the issued shares of Class A stock without par value was greater than the amount of capital represented by the issued shares of common stock without par value and, by exchanging the Class A stock into common stock, the capital represented by the two classes of stock was merged, resulting in a reduction in the amount of capital represented by the former shares of Class A stock. The court refused to accept this construction of the change and held that, since the aggregate capital remained the same after the amendment, there was no reduction of capital prohibited by Section 26 and no impairment of creditors rights. With respect to the capital represented by the issued shares, the change was immaterial to the holders of the old Class A stock, even though the proportion of capital underlying the common shares which were substituted for the old stock was less than the capital which formerly represented that stock. The claim of a particular stock to be satisfied out of the capital in rivalry to the claim of another stock is determined, not by the amount of capital representing the stock, but by the terms of the charter which define the rights and preferences of the various classes, and this claim can arise only when capital is distributed. What the stockholders lost by the amendment were any preferences they had over the holders of common stock; these were lost by the vote to exchange such shares into shares of common stock but that point was not involved in this case. *Saperstein v. Wilson & Co., Inc.*, Court of Chancery, New Castle County, December 4, 1935. CCH Court Decisions Reporting Service Requisition No. 148529.

Keller et al. v. Wilson & Co., Inc., (Corporation Journal, October, 1935, page 6.) **Appeal docketed in Delaware Supreme Court, January 16, 1936.**

Minutes showing declaration of dividends are not "instruments of writing for the payment of money." A stockholder brought this action against a corporation under a statute relating to actions upon "instruments of writing for the payment of money." The "instruments" offered in evidence were copies of the minutes of three special meetings of the defendant corporation at which resolutions were

adopted for the declaration of three cash dividends. While not denying a right of action on the part of a stockholder upon the declaration of a lawful dividend, it was held that judgment in the form here requested—that of a summary judgment by default upon an affidavit of demand—must be refused, as the minutes are mere matters of evidence, showing the action of the Board and that they do not constitute an obligation in writing for the payment of money within the intent of the statute. *Seely v. Fleming Coal Co.*, Superior Court of Delaware, Sussex County, 180 A. 326. Ivan Culbertson of Wilmington, for plaintiff. Horace Greeley Eastburn of Wilmington, and Caleb M. Wright of Georgetown, for defendant.

Michigan.

Venue of suits against domestic corporation. In an action in which stockholders sought the appointment of a receiver for appellant Michigan corporation to wind up its affairs and dissolve it, the court held that, under the Michigan law, the suit should have been instituted in the county in which the home office and place of business of the company in Michigan was located, rather than, as in this case, in another county in which the plaintiffs lived. "A suit of this nature, according to the adjudicated cases," remarked the court, "is local in character; and therefore exclusive jurisdiction is in the chancery court of the county in which the corporation and its property are located." *Orloff v. Morehead Manufacturing Company*, 262 N. W. 736. Douglas, Barbour, Desenberg & Purdy, (Harold B. Desenberg, of counsel), of Detroit, for appellants. Jacob F. Fahrner and Burke & Burke of Ann Arbor, for appellees.

New Jersey.

Use of treasury funds by company to purchase its own stock held unlawful where capital was seriously impaired as a result. This was an action in equity in which the appellee Hill, receiver of a New Jersey corporation, sought to recover from appellant Gibbon certain sums alleged to have been unlawfully and fraudulently received by him from the corporation.

Appellant had agreed to sell his holdings of substantially all of the company's stock to one of its employes named Cole, payment to be made in part by cash and the remainder by means of promissory notes. In addition, Cole obtained a release from the company of appellant's indebtedness to it. The company assisted the purchaser by buying from him 650 shares of its own capital stock, for which it advanced cash which was partly borrowed and partly from its own treasury. The District Court had found that the agreement between appellant and Cole was in effect an agreement for the purchase of the appellant's stock by the company and that, though the company was solvent at the time of the agreement, the payment of the purchase price, which included the cancellation of appellant's indebtedness to the company, seriously impaired its capital. The

New Jersey Corporation Act forbids directors of a corporation to "divide, withdraw, or in any way pay to the stockholders or any of them, any part of the capital stock of such corporation, or reduce its capital stock except as authorized by law." Under the circumstances, the use by the company of its treasury funds to purchase its own stock from the appellant through Cole was held unlawful under the law of New Jersey by the District Court and this finding was affirmed by the Circuit Court of Appeals, Third Circuit, which said: "We think that, whether we apply the New Jersey act strictly so as to make any purchase by a New Jersey corporation of its own stock ultra vires, or whether we consider that such a purchase is void only if the capital of the corporation is seriously impaired, the purchase in the instant case was void. The facts found by the learned district judge justify the conclusion that the capital of the company was seriously impaired by reason of the purchase of the appellant's stock and that its assets were depleted to the injury of its creditors." *Gibbon v. Hill*, 79 F. (2d) 288. W. Horace Hepburn, Jr. of Philadelphia, for appellant. Harold B. Beitler, Percival H. Granger, and Reber, Granger & Montgomery, all of Philadelphia, for appellee.

Oklahoma.

Resolution of directors limiting authority of officers and agents is not binding upon uninformed party dealing with them. A resolution of the board of directors of plaintiff company provided that debts in excess of $500 were not to be incurred by its officers or agents without the approval of the board of directors. The president and general manager had authorized an employe to enter into contracts in excess of that amount. In this action the company sought to have the contract declared invalid because of the resolution. The party with whom the employe dealt had had no knowledge of it. The court held the resolution could not affect one who was not informed regarding it. *Cherokee Public Service Co. v. Harry Cragin Lumber Co.*, 49 P. (2d) 723. Kelly Brown and John W. Porter of Muskogee, for plaintiff in error. Brooks, Brooks & Fleeson of Wichita, Kansas, for defendant in error. The Supreme Court of Oklahoma made acknowledgment of aid in the preparation of the opinion by an advisory committee selected by the State Bar, consisting of Byrne A. Bowman, Mont Powell and R. R. Bell.

Oklahoma.

Vice-president's signature on stock certificate, forged in other respects, held not binding on company where purchaser had no contacts with that officer. Plaintiff, through a stock salesman, purchased a certificate represented to be for 100 shares of the capital stock of defendant company of $10 par value, which the company refused to recognize as valid, and plaintiff thereupon brought suit for $1,000 damages. Defendant answered that the stock certificate

was a forgery, and denied that the admitted signature of its vice-president appearing on it was signed by him within the apparent scope of his authority. The evidence showed that plaintiff did not acquire the certificate through the vice-president, whom she had never met and of whom she had never heard until she received the certificate, and further that she had dealt only with the stock salesman and at no time had had any contact with the company. The certificate bore a fictitious seal and a forged signature of a person as secretary who was not in fact secretary. Under the circumstances, the court arrived at the conclusion that the certificate was worthless and that defendant was not liable, as the plaintiff had never dealt with its officer and had not been deceived by any apparent authority on his part to bind the company. *Gooch v. Natural Gas Supply Co.*, Oklahoma Supreme Court; decided November 12, 1935; 51 P. (2d) 932. Commerce Clearing House Court Decisions Reporting Service Requisition No. 146758. The court made acknowledgment of aid in the preparation of the opinion by an advisory committee selected by the State Bar, consisting of Attorneys H. R. Williams, R. H. Wills and A. E. Montgomery.

South Carolina.

A voting trust is held not to be against public policy. Appellants sought to have a voting trust in which they were interested declared void on the ground that voting trusts were illegal and against public policy. The court, after an examination of the state constitution and pertinent statutes, reached an opposite conclusion, saying that "there is no indication in the Constitution and statutes of the state that it is against the public policy of the state for stock in corporations to be held and voted by others than the true owners, but, on the other hand, every statute on the subject, except the statute with reference to railroad corporations, expressly recognize that the stock may be held and voted by one not the owner of the stock." *Alderman et al. v. Alderman et al.*, 181 S. E. 897. Epps & Epps of Sumter, and Robinson & Robinson of Columbia, for appellants. A. C. Hinds of Kingstree, T. H. Stukes of Manning, and L. D. Lide of Marion, for respondents.

Virginia.

A corporation, other than a railroad company, may not be chartered to carry on several forms of public utility services. Appellant company, chartered to conduct a telegraph or telephone business, or both, presented to the commission a draft of a proposed amendment to its charter, which in terms authorized the corporation to conduct several different kinds of public service, to wit, a telephone business, a telegraph business, an electric light, heat, and power business, a distribution of artificial and natural gas, and a distribution and supply of water. The commission reached the conclusion that the corporation could not, under section 3865 of the Code, be

authorized by an amendment to engage in any public service in addition to that for which it was chartered, and from the order refusing to pass the amendment, this appeal was taken. The court said that "the question presented, in its final analysis, is whether a corporation (other than a railroad company) may, under section 3865, be chartered for the purpose of engaging in more than one form of public service," amendments of the charters of such companies being permitted by section 3870 of the Code so long as the alteration or extension contains "only such provisions as would be allowable or proper to be contained in the original certificate or articles of association."

Section 3865 provides for the formation of a corporation "to purchase, lease, construct, maintain and operate telegraph or telephone lines, or both, a canal, a turnpike, or any other works, except a railroad intended to be used for public service." The court upheld the commission's action, determining that under section 3865 a corporation, other than a railroad company, might not be chartered for the purpose of engaging in more than one type of activity. It refused to interpret the word "or" preceding the words "any other works" to read "and," saying: "We find in the language of the section itself nothing which points to the conclusion that it was the 'obvious intention of the Legislature' that the word 'or' was intended to mean 'and.' We naturally assume, therefore, that the draftsman intended the word 'or' to have its ordinary, literal, and disjunctive meaning. Neither do we find in the history of the statute anything to indicate that it means other than as written." *South East Public Service Corporation of Virginia v. Commonwealth ex rel. State Corporation Commission,* 181 S. E. 448. Hunton, Williams, Anderson, Gay & Moore of Richmond, for appellant.

Foreign Corporations

Colorado.

Service of process on a foreign corporation in its home state held insufficient to permit entry of a personal judgment against it. In an action in which petitioner, a Texas banking corporation, was alleged to have fraudulently disposed of certain certificates of stock in a Colorado corporation, personal service of summons was made in Texas at the office of the bank and its attorney appeared specially in this Colorado suit for the sole purpose of quashing the service. It was held that the service on the non-resident bank was insufficient to subject it to jurisdiction over it. The court observed that "corporate stock in a Colorado corporation has its situs in this state. The certificates are merely evidence of the stock itself, and it is immaterial where they may happen to be. The district court has jurisdiction over the property and may lawfully proceed with reference to it so long as it avoids entering a personal judgment against the nonresident defendant. Under the facts shown, a personal judgment could not lawfully be rendered against that defendant unless

it should hereafter voluntarily enter a general appearance in the case." *People ex rel. Edinburg State Bank & Trust Company v. District Court of Routt County, et al.*, 50 P. (2d) 789. Joseph K. Bozard of Steamboat Springs, for petitioners. Addison M. Gooding of Steamboat Springs, for respondents.

Indiana.

Agent soliciting orders, which he personally filled from stock supplied to him over state lines by a foreign corporation, held to be doing intrastate business. An ordinance of appellant town provided for the licensing of peddlers of merchandise and appellee was arrested for violating its provisions by failing to be licensed. The lower court had held that he was engaged in interstate commerce and that he was not subject to the ordinance. The facts were that appellee called upon prospective customers at their homes, soliciting orders for groceries. He requisitioned the goods needed from his employer in another state. These were later furnished to him in bulk, no portion of them being designated to be delivered to a particular customer, the correct filling of each order being appellee's responsibility, as was the collection of the selling price. In holding that the ordinance applied to appellee, the court said that "if the appellee became the owner of the goods in bulk when he received them from the company at its office, it necessarily follows that he solicited purchases of his own goods and was conducting a strictly intrastate business as a peddler. The fact that he took orders and then purchased the goods to fill the orders from a foreign vendor would not change the fact that his business was that of an itinerant retailer, whose method of doing business brought him within the purview of the ordinance and made him subject to the police regulations therein." "But if, as apparently found by the trial court, the defendant throughout the entire transaction was acting as the agent of the Great American Tea Company, then the company itself was engaging in intrastate business in Indiana through the medium of the peddling of the defendant." *Town of Sellersburg v. Stanforth*,* 198 N. E. 437. C. L. Fleshman and L. A. Douglass of Jeffersonville, for appellant. Russell Kehoe of Jeffersonville, for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service**, Indiana volume, page 587-15.

New York.

A Massachusetts trust is not a "foreign corporation" and need not qualify as such. The plaintiffs, trustees under a Massachusetts trust, doing business in New York, brought suit against defendant for breach of a contract entered into in New York. The defendant moved to have the suit dismissed on the ground that the trustees are a "foreign corporation" not qualified in the state and, as such a foreign corporation, may not maintain suit under Section 218 of the General Corporation Law, which bars the maintenance of suit

rati rust Company in all matters on, cation, statutory representa- rpo s, is to deal with members of

SIMPLE TO USE—AND ECONOMICAL

If an attorney has all papers ready for incorporation or qualification, no matter in what state or territory of the United States, or what province of Canada, we will take them at that point and see that every necessary step is performed—papers filed, copies recorded, notices published, as may be required in the state, statutory office established and thereafter maintained; in case of new companies, incorporators furnished, meeting held, directors elected, minute book opened.

If, before drafting the papers, you wish to study the question of best state for incorporation of your client's particular business, most suitable capital set-up, soundest purpose-clauses, or other provisions, we will bring you precedents from the best examples of corporation practice on which to formulate your plans, or, if you desire, will draft for your approval certificate and by-laws based on such precedents.

If uncertain as to necessity of a client's qualifying in any state, we will, upon submission of the facts, bring you digests (with citations) of leading court decisions showing the attitude of each state involved on the kind of business transacted by your client.

TANGLED UP IN DETAIL

Corporation Lawyer Requires Freedom from Routine for Creative Work

In organizing a corporation or qualifying it as foreign in any state, a lawyer's work divides automatically into two classes: creative, constructive, law work, in which his knowledge of the law and its practice is the big factor; and second, the detail, or clerical work, in which unflagging patience and painstaking attention to each minute detail are what count most.

When a lawyer lets himself get caught in the snarl of that latter work, his constructive work suffers.

The Corporation Trust Company's job is to relieve the corporation lawyer of his detail. Our organization is the modern evolution, in corporation practice, of the law clerk.

DELAWARE

The Corporation Trust Company's facilities for handling Delaware business are illustrative of the measures this company takes to see that a lawyer's work gets the utmost in watchful supervision and lightning-like promptness. Just across the Green from the state capitol is The Corporation Trust Company's Dover office, so placed that the quickest possible contact may be made with the Secretary of State's office in handling business for lawyers—putting papers on file, procuring certified copies, getting official information. Then at Wilmington are the company's main Delaware offices, so located in order that the metropolitan railroad and mail services of Wilmington may be obtained—the company's own fast motor cars connecting Wilmington with Dover in practically an hour's time.

in the state by an unqualified foreign corporation upon contracts made in New York. This motion was denied, the court saying: "A Massachusetts trust is neither in fact nor in law a corporation. True, it has many of the attributes of a corporation. Nevertheless, in Massachusetts, as well as in this state, a business trust is held to exist by virtue of the common law rather than as the creature of statute. A so-called Massachusetts trust is not formed under the laws of that state relating to the organization of corporations. It is not governed by the statutes of that state regulating corporations; it owes its existence to the will of its organizers as expressed in the declaration of trust. In Massachusetts, an association such as we are here considering is not a corporation, although by statute in that state it may be treated as such for certain specified purposes. The Court of Appeals of this state has fully recognized the status of a business trust as reflected in the decisions of the Massachusetts courts." "If the Legislature desires to have a Massachusetts trust, a common-law trust, or a similar organization come within the sections dealing with the right of a foreign corporation to do business in this state, a simple amendment can effectuate this without any difficulty. The Legislature has the power to act, if it chooses so to do. Until it does so act, however, there should not be read into the statute language which is not there." *Burgoyne et al. v. James,** 282 N. Y. S. 18. Wing & Wing of New York City, for plaintiffs. Jas. Maxwell Fassett of New York City, for defendant.

* The full text of this opinion is printed in **The Corporation Tax Service, New York volume, page 511.**

Taxation

Iowa.

Gross receipts tax provisions of Chain Store Tax Act of 1935 held unconstitutional. The Chain Store Tax Act of 1935 provided for two types of tax, one being graduated according to the number of stores in excess of one and the other based upon gross receipts with a flat fee of $25 upon $50,000 or less of gross receipts and with the rates to be applied to gross receipts above that amount graduated at increasing figures according to each $10,000 unit within given brackets, the maximum rate applicable being $1,000 for each $10,000 of gross receipts in excess of $9,000,000. The court held the gross receipts type of tax to be unconstitutional as being arbitrary and discriminatory under the 14th Amendment to the Constitution of the United States, as it "becomes indirectly a tax upon each sale and results in an exaction of taxes in the larger graduated class in a greater amount and proportion than those exacted from a business doing the same thing where the amount of the gross sales is smaller." No objection was found to the tax as based upon the number of stores. *Great Atlantic and Pacific Tea Co. v. Valentine et al.*, United States District Court, Des Moines, Iowa, decided November 19, 1935. Commerce Clearing House Court Decisions Reporting Service

Requisition No. 147008. Gamble, Read & Howland of Des Moines, for complainant. Edward L. O'Connor, Attorney General, Clair Hamilton, Assistant Attorney General, and Frank F. Messer, Special Assistant to Attorney General, for defendants.*

* The full text of this opinion is printed in **The Corporation Tax Service, Iowa volume, page 7554.**

Oklahoma.

Ad valorem taxation of personal property moving in interstate commerce. In this case, the court outlined the circumstances under which personal property may be taxed for ad valorem purposes, when there has been a temporary interruption in the movement of the property in interstate commerce, as follows: (1) "Where personal property in the course of its journey in interstate commerce is collected at a given point by any means of transportation, and is merely awaiting the necessary facilities for further transportation on its journey, it will be deemed to be in transitu while so detained, and not subject to local taxation there; but where it is waiting indefinitely the owner's pleasure, or the rise of markets, or is waiting or undergoing a further process of manufacturing, it may acquire an actual situs at such a point, rendering it there subject to taxation; (2) After the interstate movement has begun, it may be regarded as continuing so as to maintain the immunity of the property from state taxation, despite temporary interruptions due to the necessities of the journey or for the purpose of safety and convenience in the course of the movement. Formalities, such as the forms of billing and mere changes in the method of transportation, do not necessarily affect the continuity of the transit. The question is always one of substance, and in each case it is necessary to consider the particular occasion or purpose of the interruption during which the tax is sought to be levied." *Louisiana Iron & Supply Company v. Jolly et al.*,* 51 P. (2d) 280. Stephen A. George of Ardmore, for plaintiff in error. W. W. Potter, County Attorney, of Ardmore, for defendants in error.

* The full text of this opinion is printed in **The Corporation Tax Service, Oklahoma volume, page 2869-30.**

Oklahoma.

Situs of tangible personal property for purpose of ad valorem taxation. Proceedings by the state against the Johnson Oil Refining Company to list and assess for taxation alleged omitted personal property. The case involves different quantities of crude oil which were located in Osage county on the first day of January of each of several years. The principal question to be determined is whether each of the several quantities of tangible personal property had acquired a situs in Osage county for the purpose of taxation. The Supreme Court of Oklahoma, in passing on the points raised, says

that tangible personal property is not exempt from ad valorem taxation merely because it is in transit from one place to another within the state on the first day of January, and that if such property has not acquired a situs for the purpose of taxation elsewhere, it should be listed and assessed in the case of property owned by a corporation, at the place where the principal business of the corporation is transacted in the state. The court further says that such property existing in one of the counties of the state on the first day of January and actually in transit on that day to another county does not have a taxable situs in the first mentioned county merely because of its transitory existence there; and where such property is removed from one county or taxing district to another between January 1st and September 1st of a calendar year, and its taxable situs is changed by such removal, it may be listed and assessed for taxation in either county where it had a taxable situs, but it cannot be taxed in both. *Johnson Oil Refining Co. v. State ex rel. Templeton,** 46 P. (2d) 546. McCollum & McCollum, of Pawnee, for plaintiff in error. Sim T. Carman, Co. Atty., and McCoy, Craig & Pearson, all of Pawhuska, for defendant in error.

*The full text of this opinion is printed in **The Corporation Tax Service, Oklahoma volume, page 2849.**

General

Federal.

Federal Processing Tax is held invalid. On January 6, 1936, the United States Supreme Court held unconstitutional the Agricultural Adjustment Act of 1933, which contained provisions for a "processing tax" on certain commodities, the proceeds of which were to be available to the Secretary of Agriculture "for expansion of markets and removal of surplus agricultural products * * *, administrative expenses, rental and benefit payments, and refunds on taxes." The court said: "Beyond cavil the sole objective of the legislation is to restore the purchasing price of agricultural products to a parity with that prevailing in an earlier day; to take money from the processor and bestow it upon farmers, who will reduce their acreage for the accomplishment of the proposed end, and, meanwhile, to aid these farmers during the period required to bring the prices of their crops to the desired level." "It is inaccurate and misleading," continued the court, "to speak of the exaction from processors prescribed by the challenged act as a tax, or to say that as a tax it is subject to no infirmity. A tax, in the general understanding of the term, and as used in the Constitution, signifies an exaction for the support of the government. The word has never been thought to connote the expropriation of money from one group for the benefit of another."

The court stated that there were but two clauses of Article I, Section 8 of the Constitution which had a bearing upon the validity of this statute, referring to the "commerce" clause and the "general welfare" clause. As the government did not attempt to uphold the

validity of the act on the basis of the "commerce" clause, and, as the act's stated purpose was in the control of agricultural production, a purely local activity, this clause was determined to be irrelevant.

It was in the "general welfare" clause that the government asserted that warrant was found for the adoption of the act. "We are not now required," remarked the court, "to ascertain the scope of the phrase 'general welfare of the United States' or to determine whether an appropriation in aid of agriculture falls within it. Wholly apart from that question another principle embodied in our Constitution prohibits the enforcement of the Agricultural Adjustment Act. The act invades the reserved rights of the states. It is a statutory plan to regulate and control agricultural production, a matter beyond the powers delegated to the Federal Government. The tax, the appropriation of the funds raised, and the direction for their disbursement are but parts of the plan. They are but means to an unconstitutional end."

A dissenting opinion was written by Justice Stone, in which Justices Brandeis and Cardozo joined. *United States of America, Petitioner, v. William M. Butler, et al., Receivers of Hoosac Mills Corporation,** No. 401, October Term, 1935; 56 Sup. Ct. 312. (Motion of counsel for respondents that the mandate issue forthwith granted, January 20, 1936.)

* The full text of this opinion is printed in the **Standard Federal Tax Service—1936—page 9287.**

New York.

Liability of transfer agent in transferring stock certificate reported to it as "lost." On November 15, 1935, the New York Supreme Court, Appellate Division, First Department, held that a transfer agent was not liable, under common law principles, for having transferred stock to one who had purchased it in good faith, where the facts were that the stock certificate, bearing blank endorsement for transfer, had been placed by a brokerage firm in the hands of its messenger, who had wrongfully delivered it to a third person and later, before the transfer, the transfer agent had been notified that the certificate had been lost, without being informed that any criminal act had been connected with the loss. This ruling, in the case of *Van Schaick, Superintendent of Insurance, etc., respondent, v. National City Bank of New York, appellant,* 283 N. Y. S. 372, reverses the finding at the Trial Term of the Supreme Court on March 14, 1935, noted in The Corporation Journal for April, 1935, page 380. Shearman & Sterling, (Carl A. Mead, of counsel; Lester Kissel on the brief), all of New York City, for appellant. Alfred C. Bennett (Jacob J. Alexander, of counsel) of New York City, for respondent. Davis, Polk, Wardwell, Gardiner & Reed (Walter D. Fletcher, of counsel; Atwood H. Miller on the brief), all of New York City, amici curiae.

Some Important Matters for February and March

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Notification Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALABAMA—Annual Franchise Tax Return due between January 1 and March 15.—Domestic and Foreign Corporations.

Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Franchise Tax due April 1, but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

ALASKA—Annual Report due within 60 days from January 1.—Foreign Corporations.

ARIZONA—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Statement of Mining Companies due between January 1 and April 1.—Domestic and Foreign Corporations engaged in mining of any kind.

ARKANSAS—Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

CALIFORNIA—Return of Information at the source and Return of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

Franchise (Income) Tax Return due on or before March 15. —Domestic and Foreign Corporations.

COLORADO—Annual Report due on or before March 16.—Domestic and Foreign Corporations.

CONNECTICUT—Annual Report due on or before February 15 (if corporation was organized or qualified between January 1 and June 30).—Domestic and Foreign Corporations.

Income Tax Return due on or before April 1.—Domestic and Foreign Corporations.

DELAWARE—Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations making payments of dividends, interest or other income to any citizen or resident of Delaware aggregating $1,000 or more during 1935.

DOMINION OF CANADA—Return of Information at the source due on or before February 29.—Domestic and Foreign Corporations.

GEORGIA—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

IDAHO—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

ILLINOIS—Annual Report due between January 15 and February 29.—Domestic and Foreign Corporations.

INDIANA—Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

IOWA—Income Tax Return and Return of Information at the source due on or before March 31.—Domestic and Foreign Corporations.

KANSAS—Return of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Annual Report and Franchise Tax due on or before March 31.—Domestic and Foreign Corporations.

LOUISIANA—Capital Stock Statement due on or before March 1.—Foreign Corporations.

MAINE—Annual License Fee due on or before March 1.—Foreign Corporations.

MARYLAND—Annual Report due on or before March 15.—Domestic and Foreign Corporations.

MASSACHUSETTS—Return of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

MINNESOTA—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1.—Foreign Corporations.

MISSISSIPPI—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

MISSOURI—Return of Information at source due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

MONTANA—Annual Report of Capital employed due between January 1 and March 1.—Foreign Corporations qualified after February 27, 1915.

Annual Return of Net Income due on or before March 1.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic and Foreign Corporations.

Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

NEBRASKA—Annual Statement to Tax Commissioner due on or before April 1.—Foreign Corporations.

NEW HAMPSHIRE—Annual Return due on or before April 1.—Domestic and Foreign Corporations.

Franchise Tax due on or before April 1.—Domestic Corporations.

NEW JERSEY—Annual Franchise Tax Return due on or before the first Tuesday in February.—Domestic Corporations.

NEW MEXICO—Return of Information at the source due on or before April 1.—Domestic and Foreign Corporations.

NEW YORK—Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Franchise Tax Report of Real Estate and Holding Corporations due between January 1 and March 1.—Domestic and Foreign Real Estate and Holding Corporations. Forms 41 C. T. and 42 C. T., Article 9 of the Tax Law.

Annual Franchise Tax of Real Estate and Holding Corporations due on or before April 1.—Domestic and Foreign Real Estate and Holding Corporations.

NORTH CAROLINA—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

NORTH DAKOTA—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

OHIO—Annual Franchise Tax Report due between January 1 and March 31.—Domestic and Foreign Corporations.

Annual Statement of Proportion of Capital Stock due between January 1 and March 31.—Foreign Corporations.

OKLAHOMA—Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

OREGON—Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Combined Excise (Income) Tax Return and Intangibles Income Tax Return due on or before March 31.—Domestic and Foreign Corporations.

PENNSYLVANIA—Capital Stock Tax and Corporate Loans Report due on or before March 15.—Domestic Corporations.

Franchise Tax and Corporate Loans Report due on or before March 15.—Foreign Corporations.

Bonus Report due on or before March 15.—Foreign Corporations.

RHODE ISLAND—Annual Report due during February.—Domestic and Foreign Corporations.

Corporation Tax Return due on or before March 1.—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual License Tax Report due during February.—Domestic and Foreign Corporations.

Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

SOUTH DAKOTA—Annual Capital Stock Report due before March 1.—Foreign Corporations.

Income Tax Return and Return of Information at the source due on or before March 30.—Domestic and Foreign Corporations.

TENNESSEE—Annual Privilege (Franchise) Tax Return due on or before March 1.—Domestic and Foreign Corporations.

TEXAS—Annual Franchise Tax Report due between January 1 and March 15.—Domestic and Foreign Corporations.

UNITED STATES—Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Return of Net Income due on or before March 15.—Domestic and Foreign Corporations having an office or place of business in the United States.

UTAH—Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

VERMONT—Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic Corporations.

Annual License Tax Return and Payment due on or before March 1.—Domestic and Foreign Corporations.

Extension of Certificate of Authority due on or before April 1.—Foreign Corporations.

List of Stockholders due on or before April 1.—Domestic and Foreign Corporations.

VIRGINIA—Annual Registration Fee due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before March 1.—Domestic Corporations.

WASHINGTON—Income Tax Return due on or before March 31.—Domestic and Foreign Corporations.*

WEST VIRGINIA—Return of Information at the source due on or before February 15.

WISCONSIN—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1.—Domestic and Foreign Corporations.

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* The necessity of filing this Return depends upon the decision of the Washington Supreme Court in a suit now before it. Returns of Information at the source are not required, as the Personal Income Tax law has been held unconstitutional.

CORPORATE MEETINGS HELD

During the past few weeks meetings of the corporations named below, among many others, have been held at the offices of The Corporation Trust Company.

Brown Shoe Company
Carleton and Hovey Company
Pillsbury Flour Mills Company
The Atwood Machine Company
Ingersoll, Rand, Inc.
Silver, Burdett and Company
Warner Brothers Pictures, Inc.
Benjamin Moore and Company
The Eagle-Picher Mining and Smelting Company

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplemental pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

A Corporation's Achilles Heel. Containing the complete text of the opinion of the Supreme Court of the United States in State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court, State of Washington, and of the Supreme Court of New Mexico in Silva v. Crombie & Co. —two decisions of great significance to attorneys of corporations qualified in one or more states.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages, for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation, completely revised to reflect the changes made by the amendments of 1935.

New Deal Laws of Importance to Corporations. Contains complete text of Securities Act of 1933 as amended by Title II of the Securities Exchange Act of 1934, all matters in the original act omitted in the 1934 amendments being set in brackets, and all new matters added by the 1934 amendments being set in italics; complete text of the Securities Exchange Act of 1934; and complete text of the amendments approved June 7, 1934 to the Bankruptcy Act providing for corporate reorganizations.

The New Bankruptcy Law. Contains, first, the eleven-word amendment approved June 18, 1934 to the original amendment to the Bankruptcy Act approved June 7, 1934 (and published in our pamphlet New Deal Laws described above); second, two examples of voluntary petitions for reorganization under the new provisions; and third, two examples of petitions under the new provisions for appointment of trustees (reorganization sought).

The High Cost of Whistles for Corporations. Benjamin Franklin's classic, "The Whistle," here is shown, by the decisions in actual court cases, to have a very pointed application to some of the policies of some business corporations of our own day. A sixteen-page pamphlet for both laymen and lawyers.

Special Report. The Case Against Corporate Representation by Business Employes. Specific experiences of different corporations with the handling by untrained corporate representatives of such matters as service of process, notices of taxes due, filing of corporation reports, etc.

What Constitutes Doing Business. (Revised to April 15, 1934.) A 198-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index makes them accessible also by either case name or topic. There is also a section containing citations to cases on the question of doing business such as to make the company subject to service of process in the state.

Amateur Corporate Representation. A booklet dealing with some of the weaknesses of placing a company's statutory representation in the hands of business employes or others not trained in the matters involved.

When Corporations Cross the Line. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

Questionnaire on Business Outside State of Organization. This is a Form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.